



Federal Communications Commission
Washington, D.C. 20554

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DA 08-349

In Reply Refer to:

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JNE Investments, Inc.
PO Box 60991
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In re: Siga Broadcasting Corporation
KTMR(AM), Edna, Texas
Facility ID: 28191
File No. BP-20040108ALC

Gentlemen:

We have before us (1) a Petition for Reconsideration (“Petition”) filed by JNE Investments, Inc. (“JNE”) on April 1, 2005, asking for reconsideration of a March 8, 2005, staff decision¹ dismissing JNE’s informal objection against a minor change application for Station KTMR(AM) as untimely; (2) Siga Broadcasting Corporation’s (“Siga”) April 11, 2005, Opposition to the Petition for Reconsideration; and (3) JNE’s April 25, 2005, Reply to Opposition to Petition for Reconsideration. For the reasons discussed below we dismiss the Petition for Reconsideration.

Background. Siga filed the above-captioned minor change application (“Application”) on January 8, 2004, which the staff granted on December 1, 2004. JNE filed an Informal Objection against the minor change application on December 2, 2004, after the grant of the application, but before public notice of the grant was issued on December 6, 2004. JNE objected to grant of the Application stating: (1) it was unacceptable for filing as a minor change application because it proposed a change in the station’s community of license from Edna, Texas, to Bulverde, Texas; and (2) the minor change application is mutually exclusive with a major change application filed by Siga on January 28, 2004. On March 8, 2005, the staff dismissed JNE’s informal objection as untimely because it was filed after the Commission had taken action on the application.²

Discussion. Section 1.106(b)(1) of the Commission’s Rules (the “Rules”) allows a petition for reconsideration to be filed by any party to the original proceeding or any party whose interests will be adversely affected by the action taken by the Commission.³ If the petitioner was not party to the original proceeding it must show good reason for why it was unable to participate in the earlier proceeding.

¹ Letter to Christopher D. Imlay, Esq. from Peter H. Doyle, reference 1800B2-JBS (MB Mar. 8, 2005).

² Section 73.3587 of the Commission’s Rules allows informal objections to be filed any time “before Commission action on any application for an instrument of authorization.” 47 C.F.R. § 73.3587 (emphasis supplied).

³ 47 C.F.R. § 1.106(b)(1).

JNE's Informal Objection was filed nearly eleven months after the Siga Application was filed. JNE provides no explanation for why it was unable to participate in the original proceeding. JNE attempts to excuse the delay by pointing out that Section 73.3587 of the Rules contains no deadline for the filing of an informal objection and that it could not have known of the grant of Siga's application since the informal objection was filed before public notice of the Commission's action was published. While Section 73.3587 of the Rules does not contain a filing deadline for informal objections, it specifically states that informal objections must be filed before Commission action on the application.

The Commission has afforded reconsideration to petitioners where the grant of an application occurred shortly after the application was filed.⁴ In these instances, the Commission found that an expedient grant of the applications had not allowed sufficient time for potential objections to be filed, and thus, that it was in the public interest to allow those parties to file petitions for reconsideration. However, in each of those cases, the time period between the filing of the application and the grant was less than a week. In cases where the grant of an application has occurred over 30 days from the filing of the application, the Commission has found that late filers do not have standing to file petitions for reconsideration because they failed to participate in the earlier proceeding, despite having had adequate time to do so.⁵ We find that JNE had ample opportunity to object to Siga's application, prior to the staff action. As a result, JNE does not have standing to file a petition for reconsideration in this proceeding. For these reasons, the Petition for Reconsideration will be dismissed.

Moreover, even if we were to consider the merits of JNE's Petition and underlying Informal Objection, each would be denied. First, the captioned minor change application never proposed a change in Station KTMR(AM)'s community of license; the original application and all subsequent amendments list Edna, Texas, as the community of license.⁶ In addition, the filing of a minor change application proposing a change in a station's technical facilities does not preclude a licensee from later filing a major change application proposing a new community of license, even if the minor change application has not yet been granted. No Commission rule or policy prevents a licensee from completing the proposed minor change and then implementing the proposed major change, should both be granted.⁷

⁴ See *Ted and Jana Tucker*, Memorandum Opinion and Order, 4 FCC Rcd 2816, 2816 (1989) (standing to file a petition for reconsideration found when application granted four days after public notice issued) and *Aspen FM, Inc.*, Memorandum Opinion and Order, 12 FCC Rcd 17852, 17854-55 (1997) (standing to file a petition for reconsideration found when application granted five days after acceptance).

⁵ See *Association for Community Education*, Memorandum Opinion and Order, 19 FCC Rcd 12682, 12684 (2004) (standing to file reconsideration not found when petitioner had more than 30 days to object to the application and failed to do so).

⁶ See CDBS Public Access, http://svartifoss2.fcc.gov/cgi-bin/ws.exe/prod/cdb/publicacc/prod/app_list.pl. The most recent version and all superceded versions of the application are available on the Commission's public access database.

⁷ For example, because both applications can be effectuated, the applications are not "inconsistent" under 47 C.F.R. § 73.3518. 47 C.F.R. § 73.3520 prohibits multiple applications for service in the same community, in this instance, each application concerns service in a different community.

Conclusion/Actions. Accordingly, IT IS ORDERED, that JNE's Petition for Reconsideration is DENIED.

Sincerely,

Peter H. Doyle
Chief, Audio Division
Media Bureau

cc: Christopher D. Imlay, Esq.
Peter Tannenwald, Esq.